

ESTTA Tracking number: **ESTTA639789**Filing date: **11/19/2014**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Robert Anderson		
Entity	Individual	Citizenship	UNITED STATES
Address	c/o 1120 20th Street, N.W. South Tower, 3rd Floor Washington, DC 20036-3437 UNITED STATES		

Attorney information	Christopher A. Glaser Jackson & Campbell, P.C. 1120 20th Street, N.W. South Tower, 3rd Floor Washington, DC 20036-3437 UNITED STATES CGLaser@JacksCamp.com Phone:202-457-1612
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Applicant Information

Application No	86268834	Publication date	10/21/2014
Opposition Filing Date	11/19/2014	Opposition Period Ends	11/20/2014
Applicant	K.S. Productions, Inc. 1284 Overton Circle Gallatin, TN 37066 UNITED STATES		

Goods/Services Affected by Opposition

Class 041. First Use: 2012/10/00 First Use In Commerce: 2012/10/00

All goods and services in the class are opposed, namely: entertainment, namely, providing live musical, dramatic, and dramatico-musical performances; providing an internet website portal featuring musical performances, musical videos, photographs in the field of music, online exhibitions in the field of memorabilia for entertainment purposes, and other multimedia materials in the nature of on-line interactive multimedia exhibits in the field of music

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Mark Cited by Opposer as Basis for Opposition

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	FRANK THE MAN THE MUSIC		
Goods/Services	For entertainment, namely, providing live musical, dramatic, and dra-		

	matic-musical performances; providing an internet website portal featuring musical performances, musical videos, photographs in the field of music, online exhibitions in the field of memorabilia for entertainment purposes, and other multimedia materials in the nature of online interactive multimedia exhibits in the field of music.
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Attachments	86268834 Opposition.pdf(766841 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/s/ Christopher A. Glaser
Name	Christopher A. Glaser
Date	11/19/2014

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of trademark application Serial No. 86268834
For the mark FRANK THE MAN THE MUSIC
Published in the Official Gazette on October 21, 2014

ROBERT ANDERSON

Opposer

v.

K.S. PRODUCTIONS, INC.

Applicant

NOTICE OF OPPOSITION

COMES NOW Robert Anderson (“Opposer”), a natural person residing in the State of Missouri, by undersigned counsel, and states that Opposer believes he will be damaged by registration of FRANK THE MAN THE MUSIC (the “Mark”) and hereby opposes the same. In support thereof, Opposer states as follows:

1. Opposer is a natural person residing in the State of Missouri.
2. Applicant K.S. Productions, Inc. (“Applicant”) is, upon information and belief, a Tennessee corporation with its principal place of business being 1284 Overton Circle, Gallatin, TN 37066.
3. Opposer has been an entertainment fixture for more than 40 years creating the genre of singing impressionism. Through his repertoire of about eighty (80) singing impressions, Opposer is a master vocal impressionist performing regularly in Las Vegas, Branson, Florida and Great Britain. Las Vegas Review Journal

- named Opposer “number 12” in its listing of favorite Las Vegas acts during the first fifty years of incorporation of Las Vegas.
4. Beginning in June 2011, Opposer created the concept, and began to develop, a live musical and dramatic-musical predicated on the songs and performances of Frank Sinatra.
 5. In time, Opposer named the Frank Sinatra production as FRANK THE MAN THE MUSIC.
 6. In or around June 2012, Opposer entered into a venture with an unrelated party to establish an entity to produce and market the Frank Sinatra production. Opposer retained the rights to the Mark created by him during the life of the venture.
 7. In an effort to market the Frank Sinatra production, Opposer created a poster (the “Poster”) depicting him singing at the University of Nevada, Las Vegas with the headline FRANK THE MAN THE MUSIC.
 8. A copy of the Poster was used by Applicant as its specimen in filing its application and is reproduced here as **Exhibit 1**.
 9. The Poster was created using a photograph of Opposer taken as a work for hire by photographer Eric Nagel in 2011.
 10. The Poster depicts Opposer, identifies the singer as Opposer, and states, in addition to the Mark, in all capitals, “STARRING BOB ANDERSON”.
 11. In late June/early July, 2012, an unrelated party introduced Opposer to C.K. Spurlock, the president of Applicant, as a possible investor in the production of FRANK THE MAN THE MUSIC.

12. On August 6, 2012, C.K. Spurlock forwarded an email to Opposer regarding the production of FRANK THE MAN THE MUSIC stating, *inter alia*, the “next step is to hire a legitimate business attorney and get his opinion about the trademarks ...”
13. Following the August 6, 2012 email, Opposer—having never transferred any rights in the Mark to C.K. Spurlock or Applicant—decided to not enter into any business relationship with either C.K. Spurlock or Applicant.
14. Opposer has contracted to put on the production of FRANK THE MAN THE MUSIC at The Venetian in Las Vegas beginning in January, 2015.
15. As stated by The Venetian at www.venetian.com/entertainment.html,

FRANK The Man, The Music is the quintessential salute to the greatest singer of the 20th century, Frank Sinatra. The theatrical production starring Bob Anderson, complete with a 32-piece orchestra, will re-enact a live Sinatra performance highlighting the music of The Great American Songbook, which Frank made so famous. Music lovers who have heard the stories, read the books and listened to his songs will get to travel back to a time circa 1975 and experience an evening unlike any other today.
16. Opposer is currently using the Mark in commerce and has been continuously doing so since no later than June 2012.
17. The Mark was created and developed solely by Opposer.
18. Neither C.K. Spurlock nor Applicant assisted in the creation or development of the Mark.
19. The use of the Mark by Opposer has been to the exclusion of all others.
20. The Mark has been in continuous use by Opposer with Applicant’s knowledge and consent.

21. Applicant has never objected to the use of the Mark by Opposer despite knowledge of its use by Opposer.
22. The first use of the Mark was not made by Applicant and statements to the contrary are false.
23. Applicant has not continuously used the Mark since October, 2012, as purported by Applicant.
24. Applicant has not used the Mark in commerce since October 2012.
25. Applicant has never used the Mark in commerce.
26. The relevant consuming public readily identifies the Mark as an identifier of the source, affiliation and/or sponsorship of Opposer's Frank Sinatra production, FRANK THE MAN THE MUSIC.
27. Opposer's continuous use of the Mark predates any use date which can be claimed by Applicant.
28. Given the Opposer's earlier use date, and continuous use of the Mark since before any date in which Applicant can claim, Opposer has superior rights in and to the Mark.
29. Applicant's Application of the Mark is likely to cause confusion, to cause mistake, or to deceive as to the source, affiliation or sponsorship of Opposer's Frank Sinatra production, FRANK THE MAN THE MUSIC and will harm Opposer.

WHEREFORE Opposer Robert Anderson respectfully requests that the registration of the mark shown in Application Serial Number 86268834 be refused and that this Opposition be sustained in Opposer's favor as: (1) the Mark is not

owned by Applicant but is owned by Opposer; (2) the Mark was not first used in commerce on or by the date alleged but was used, if at all, subsequent to the prior use of Opposer; (3) registration of the Mark will likely cause confusion among the relevant consumers; (4) to the extent Applicant has used the Mark, it has been previously abandoned or Applicant has engaged in a course of conduct that has caused the Mark to lose significance as an indication of source as to Applicant; and, (5) that granting Applicant's Application would dilute the distinctive quality of Opposer's Mark.

Respectfully submitted,

/s/ Christopher A. Glaser
Christopher A. Glaser, Esq.
JACKSON & CAMPBELL, P.C.
1120 20th Street, N.W.
South Tower, 3rd Floor
Washington, DC 20036
Telephone: (202) 457-1612
Facsimile: (202) 457-1678
cglaser@JacksCamp.com

